

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JUNE G. MAXAM,**

**Plaintiff,**

**v.**

**1:06-CV-1012  
(GLS/RFT)**

**WARREN COUNTY; LARRY J.  
CLEVELAND, Sheriff; ROBERT A.  
BREEN, Officer; JOSEPH EULAND,  
Officer; MONTE McNEILL, Officer;  
WILLIAM GIRARD, Officer; TIMOTHY  
GUY, Officer; WILLIAM VANNESS,  
Officer; GARY C. HOBBS, Special  
District Attorney; TOWN OF CHESTER;  
JAMES McDERMOTT, Chester Town  
Justice; TOWN OF QUEENSBURY and  
MICHAEL MULLER, Town Justice,**

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

June G. Maxam  
Plaintiff, Pro Se  
Box 408  
7 Foster Flats Road  
Chestertown, New York 12817

**FOR THE DEFENDANTS:**

*(Warren County, Larry J.  
Cleveland, Robert A. Breen,*

*Joseph Euland, Monte McNeill,  
William Girard, Timothy Guy,  
and William Vanness)*

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*(Town of Queensbury and Michael  
Muller)*

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Glens Falls, New York 12801

WILLIAM A. SCOTT, ESQ.  
JOHN D. ASPLAND, ESQ.

**Gary L. Sharpe**  
**U.S. District Judge**

**ORDER**

*Pro se* plaintiff June Maxam has filed a complaint alleging numerous

violations of her constitutional rights by several defendants in Warren County. See *Dkt. No. 1*; see also 42 U.S.C. § 1983. Pending are defendants' four motions to dismiss. See *Dkt. Nos. 13, 27, 30, 42*. At this juncture, Maxam has only responded to Hobb's motion. See *Dkt. Nos. 13, 34*. Despite the passage of the due dates, she has failed to file responses to the other pending motions.<sup>1</sup> On May 15, 2007, Maxam requested permission to withdraw her complaint without prejudice. See *Dkt. No. 48*. In addition, she requested permission to refile her complaint if she finds attorney representation. See *id.*<sup>2</sup>

Rule 41 of the Federal Rules of Civil Procedure provides the following two ways in which a plaintiff's action may be dismissed: (1) "by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment..." or (2) "by filing a stipulation of dismissal signed by all parties[.]" FED. R. CIV. P. 41(a)(1). Moreover, "[e]xcept as provided in paragraph (1)...an action shall not be dismissed at

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<sup>1</sup>Maxam already received an extension of time to respond to the motions filed by defendants, Warren County and the Town of Queensbury. See *Dkt. No. 41*. In addition, she failed to respond to the motion by the Town of Chester. On May 2, the court granted Maxam an additional 14 days to respond to these motions. See *Dkt. No. 47*. To date, the court has not received responses to these motions.

<sup>2</sup>The court notes that the Town of Queensbury and the Town of Chester defendants filed objections to Maxam's request. See *Dkt. Nos. 49, 50*.

the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." FED. R. CIV. P. 41(a)(2).

Here, while it may be true that Maxam's complaint is subject to dismissal for the reasons articulated in defendants' motions, *see Dkt. Nos. 13, 27, 30, 42*, the court is also mindful of the Second Circuit mandate to construe *pro se* papers as broadly as possible, and provide the *pro se* litigant an opportunity to amend before granting a motion to dismiss. *See Triestman v. Federal Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006). As such, acting within its discretion under Rule 41(a)(2), the court dismisses Maxam's complaint without prejudice. If she chooses to refile, defendants are permitted to resubmit their original motions in the same form, *see Dkt. Nos. 13, 27, 30, 42*, as well as further supplement their papers if they so choose. Accordingly, Maxam's complaint is dismissed in its entirety without prejudice.

**WHEREFORE**, for the foregoing reasons, it is hereby

**ORDERED** that Maxam's complaint (**Dkt. No. 1**) is **DISMISSED IN ITS ENTIRETY WITHOUT PREJUDICE**; and it is further

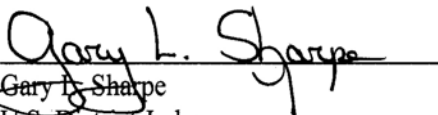
**ORDERED** that if Maxam chooses to refile her complaint (**Dkt. No. 1**), defendants may refile their original motions to dismiss in their current

form (**Dkt. Nos. 13, 27, 30, 42**) and/or supplement their papers if they so choose; and it is further

**ORDERED** that the Clerk of the Court provide copies of this Order to the parties.

**IT IS SO ORDERED.**

May 16, 2007  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge